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IN THE SUPREME COURT OF MISSISSIPPI

No. 2000-M-01839

IN RE: CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

ORDER

This matter has come before a panel of the Court composed of Presiding Justice Banks and Justices McRae and Waller, on Motion for Stay of Proceedings Pending Disposition of Petition for Interocutory Appeal filed by the Chamber of Commerce of the United States of America. Having considered the motion, the panel concludes that it is without merit and should be denied.

IT IS THEREFORE ORDERED that the Motion for Stay of Proceedings Pending Disposition of Petition for Interocutory Appeal filed by the Chamber of Commerce of the United States of America in this cause be and the same is hereby denied.

SO ORDERED, this the 3rd day of November, 2000.

/s/ _____
FRED L. BANKS, JR.,
Presiding Justice,
For The Court

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

Cause No. G-2000-2128 S/2

FRANK G. VOLLOR,

Plaintiff,

vs.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; WABG-TV, GREENVILLE, MS; WXVT-TV, GREENVILLE, MS; WAPT-TV, JACKSON, MS; WJTV-TV, JACKSON, MS; WLBT-TV, JACKSON, MS; WDBD-TV, JACKSON, MS; WTOK-TV, MERIDIAN, MS; AND WCBI-TV, COLUMBUS, MS,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

THIS CAUSE is before the Court on Plaintiff's Motion for Temporary Restraining Order. Having reviewed the motion and Defendant's opposition to such, the Court is of the opinion that the motion is well taken and is, therefore, granted.

The court has reviewed all relevant filings, all relevant case law, and has in fact held hearing on Plaintiffs' Motion. Based upon this information, this Court is satisfied that a Temporary Restraining Order is within the interest of equity. This Court finds that Plaintiff will be irreparably and immediately harmed in the absence of immediate equitable relief by this Court. The illegal television advertisements of the Chamber of Commerce of The United States of America (hereinafter "Chamber") clearly support the opposing candidate in the Central District election for the Supreme Court of

Mississippi. These advertisements clearly affect public opinion and voting decisions, resulting in an immediate and irreparable harm to Plaintiff. This harm to Plaintiff will not be remedied by the imposition of criminal fines and charges in accordance with the election status. Therefore, Defendants are incorrect in their assertion that this Court may not restrain an action which may be criminally punished at a later date. Criminal punishment is not the purpose of this Court; instead, this Court's purpose is to halt the harm done to the Plaintiff, immediately before further harm occurs.

Defendant Chamber further asserts that it is not subject to this Court's jurisdiction as it is a corporation headquartered in Washington. However, the United States Supreme Court has clearly held that a corporation is subject to personal jurisdiction in a state in which it is "doing business." Although the Chamber is a non-profit organization, it is clearly "doing business" in Mississippi as established by law. In fact, the Chamber has involved itself intricately in the most important of Mississippi business, the election of its public officials. Therefore, it is clear that the Chamber has impliedly consented to Mississippi jurisdiction. Finally, Defendants argue that this Court should follow the decision of the District Court of Appeal of Florida in Republican Party of Florida, et. al v. The Florida Elections Commission, et. al, 658 So. 2d 653 (1995). This Court has considered this case and finds it to be distinguishable from the case at hand. In this case the Florida Court found that the issuance of an injunction was an unconstitutional prior restraint of speech as the court was required to "analyze the substance and content of the proposed communication, not just make a factual determination as to the amount of funds expended." 658 So. 2d 653, 656 (1995). In the case at hand, however, this Court is simply being asked to "make a factual determination as to the amount of funds expended." Therefore, the issuance of an injunction in this case is not an unconstitutional prior restraint of speech.

The television advertisements on behalf of Jim Smith by the Chamber are indirect expenditures which are subject to the contribution limits and reporting requirements of Mississippi Code Annotated, Section 23-15-801. Chamber of Commerce of the United States of America v. Michael Moore, Attorney General, State of Mississippi, Eric Clark Secretary of State, State of Mississippi, Civil Action No. 3:00-cv-778WS (S.D. Miss. 2000). The Chamber has violated the spending limit provision of the Mississippi Election Laws which cap individual expenditures at $5,000.00 per person or $1,000.00 per corporation. The relief sought by Plaintiff is narrowly crafted in order to achieve the proper legal result and is the least restrictive means of enforcement of the applicable laws.

Therefore, it is ordered that each of the Defendants, their agents, servants, employees, attorneys, or those in active concert with them, are hereby enjoined from contracting to transmit or transmitting any television advertisement, which is paid for or produced by the Chamber of Commerce of The United States of America, its agents, servants, or employees, concerning the Central District election for the Supreme Court of Mississippi between Jim Smith and Frank G. Vollor.

This Order shall take effect and be binding upon the filing of a bond in the amount of $1,000.00 and shall expire ten (10) days after entry or after further order of this Court, whichever is sooner.

SO ORDERED, ADJUGED, AND DECREED THIS the 3rd day of November, 2000.

/s/ _____

CHANCELLOR WILLIAM HALE SINGLETARY

SUPREME COURT OF THE UNITED STATES

No. 00A406

CHAMBER OF COMMERCE OF THE UNITED STATES,
Applicant,

v.

FRANK G. VOLLOR

ORDER

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the temporary restraining order granted by the Chancery Court of the First Judicial District of Hinds County, Mississippi, case No. G-2000-2128, issued on November 3, 2000, is stayed pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

/s/ Antonin Scalia
Associate Justice of the Supreme
Court of the United States

Dated this 6th
day of November, 2000

SUPREME COURT OF THE UNITED STATES

No. 00A406

CHAMBER OF COMMERCE OF THE UNITED STATES,
Applicant,

v.

FRANK G. VOLLOR, OLIVER DIAZ, JR.,
AND BILLY JOE LANDRUM,

ORDER

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the temporary restraining orders granted by the Chancery Court of Harrison County, Mississippi issued on November 4, 2000 and by the Chancery Court of the First Judicial District of Jones County Mississippi, issued on November 5, 2000, are stayed pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

/s/ Antonin Scalia
Associate Justice of the Supreme
Court of the United States

Dated this 6th
day of November, 2000

SUPREME COURT OF THE UNITED STATES

No.00A411

CHAMBER OF COMMERCE OF THE UNITED STATES,
Applicant,

v.

WILLIAM A. PYLE,

ORDER

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the temporary restraining order granted by the Chancery Court of the First Judicial District of Hinds County, Mississippi, case No. G2000-2137, issued on November 6, 2000, is stayed pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

/s/ Antonin Scalia
Associate Justice of the Supreme
Court of the United States

Dated this 7th
day of November, 2000

IN THE UNITED STATED DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3:00-cv-778WS

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

Plaintiff

vs.

MICHAEL MOORE, ATTORNEY GENERAL, STATE OF MISSISSIPPI, ERIC CLARK, SECRETARY OF STATE, STATE OF MISSISSIPPI

Defendants

MEMORANDUM OPINION AND ORDER

Before the court is plaintiff's Motion for Expedited Declaratory Relief under Title 28 U.S.C. §§ 2201[1] and 22022.[2] By its motion, plaintiff Chamber of Commerce of

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[1] Title 28 U.S.C. § 2201 provides:

> (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

[2] Title 28 U.S.C. § 2202 provides:

the United States of America (hereinafter "Chamber") asks this court to declare that it may televise certain political advertisements favoring specific candidates for the popularly elected Mississippi Supreme Court without being subjected to Mississippi's law pertaining to election contributions and reporting. To be answerable under Mississippi's laws, says the Chamber, the independent expenditure by a third party must expressly advocate the election or defeat of a clearly identified candidate without cooperation or consultation with any candidate or any authorized committee or agent of such candidate, and which is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of such candidate. According to the Chamber, their advertisements discuss issues of public interest; have not been coordinated with any particular candidates; and do not advocate for the election of any candidate. Thus, says the Chamber, if subjected to Mississippi's contribution limits and reporting requirements, it will suffer a severe impairment of its free speech rights under the First Amendment of the United States Constitution.[3]

The Attorney General and the Secretary of State of the State of Mississippi (hereinafter "the State of Mississippi"), defendants in this cause, are opposed to plaintiff's requested declaratory relief. Admitting that they have no proof whatsoever of any collaboration between the Chamber and the candidates involved in the advertisements, the defendants

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Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

[3] The First Amendment of the United States Constitution provides that, "[c]ongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; *or abridging the freedom of speech*, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

contend that plaintiff's advertisements cross the boundary of issue advocacy into the arena of election advocacy and, thus, expressly advocate the election of the favored candidates for the four Mississippi Supreme Court seats.

This court's jurisdiction over this matter is asserted under Title 28 U.S.C. §§1331[4], 1334[5] and Title 42 U.S.C. § 1983.[6]

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[4] Title 28 U.S.C. § 1331 states: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

[5] Title 28 U.S.C. § 1334 states in part: (a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

[6] Title 42 U.S.C.A. § 1983 provides that, "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

I. BACKGROUND

The State of Mississippi is currently in election season. In addition to the national election for President of the United States and members of Congress, Mississippi is also occupied with electing four members of its Supreme Court. Comprised of nine Justices who hail from three separate districts, the Mississippi Supreme Court, a popularly elected body, is the highest court in the State, standing in review of decisions rendered in the lower County, Circuit, Chancery, and Appeals Courts, themselves staffed by judges who are popularly elected. Except in event of a vacancy when the Governor of the State is empowered to appoint the office-holder, the members of the Mississippi Supreme Court are popularly elected by the citizenry of the respective districts and serve a term of eight years before having again to test the public's confidence at the polls. Although the contenders for the Mississippi Supreme Court are not allowed to run for the office on political party labels,[7] the contenders, as any other office-seekers, strive to raise campaign funds, acquire television and radio appearances and post election signs. Predictably, the candidates, whether incumbent or challenger, run on their qualifications, accomplishments and experience. And, since elections for Mississippi Supreme Court Justices, in character and procedure, are alike any other State election, these elections, too, are covered by Mississippi's election

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[7] Mississippi Code Annotated § 23-15-973 provides in pertinent part that, "[I] shall be the duty of the judges of the circuit court to give a reasonable time and opportunity to the candidates for the office of judge of the Supreme Court, judges of the Court of Appeals, circuit judge and chancellor to address the people during court terms. In order to give further and every possible emphasis to the fact that the said judicial offices are not political but are held without favor and with absolute impartiality as to all persons, the judges thereof should be as far removed as possible from any political affiliations or obligations. It shall be unlawful for any candidate . . To align himself . . . with any political faction or any political party. . . ."

disclosure and reporting laws found at Mississippi Code Annotated §§ 23-15-801, et seq.

On October 17, 2000 the United States Chamber of Commerce, a nonprofit corporation residing in the District of Columbia, began televising four advertisements in Mississippi which comment on the backgrounds and qualifications of four candidates for the Mississippi Supreme Court—incumbent Chief Justice Lenore Prather, Justices Jim Smith and Kay Cobb, and candidate Judge Keith Starrett. According to the Chamber, these advertisements do not fall within the embrace of Mississippi's election disclaimer and reporting laws because these advertisements do not advocate for the election or defeat, of these, or any candidates.

State Attorney General Mike Moore and Secretary of State Eric Clark disagree, contending further that these advertisements constitute "independent expenditures' subject to the reporting requirements of Mississippi Code Annotated §§ 23-15-801(j)[8] and 809[9]. Faced with the perceived risk of

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[8] Miss. Code Ann. §23-15-801(j) provides: The term "independent expenditure" shall mean an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate or any authorized committee or agent of such candidate, and which is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of such candidate.

[9] Miss Code Ann. §23-15-809 provides:

> (a) Every person who makes independent expenditures in an aggregate amount or value in excess of Two Hundred Dollars ($200.00) during a calendar year shall file a statement containing the information required under Section 23-15-807. Such statement shall be filed with the appropriate offices as provided for in Section 23-15-805, and such person shall be considered a political committee for the purpose of determining place of filing.
>
> (b) Statements required to be filed by this section shall include:

civil and criminal penalties[10] for continuing this court declare its rights in this matter.

(i) Information indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(ii) Under penalty of perjury, a certification of whether or not such independent expenditure is made in cooperation, consultation or concert with, or at request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(iii) The identification of each person who made a contribution in excess of Two Hundred Dollars ($200.00) to the person filing such statement which was made for the purpose of furthering an independent expenditure.

[10] Mississippi Code Annotated § 23-15-811 provides that, "(a) Any candidate or any other person who shall willfully and deliberately and substantially violate the provisions and prohibitions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not to exceed Three Thousand Dollars ($3,000.00) or imprisoned for not longer than six (6) months or by both fine and imprisonment.

(b) In addition to the penalties provided in paragraph (a) of this section, any candidate or political committee which is required to file a statement or report which fails to file such statement or report on the date in which it is due may be compelled to file such statement or report by an action in the nature of a mandamus.

(c) No candidate shall be certified as nominated for election or as elected to office unless and until he files all reports required by this article due as of the date of certification.

(d) No candidate who is elected to office shall receive any salary or other remuneration for the office unless and until he files all reports required by this article due as of the date such salary or remuneration is payable.

(e) In the event that a candidate fails to timely file any report required pursuant to this article but subsequently files a report or reports containing all of the information required to be reported by him as of the date on which the sanctions of paragraphs (c) and (d) of this section would be applied to him, such candidate shall not be subject to the sanctions of said paragraphs (c) and (d).

II. THE ADVERTISEMENTS

The four advertisements precipitating this lawsuit are marked as Exhibits B, C, D and E to the plaintiff's complaint. Each advertisement is described below.

Exhibit B-The Chief Justice Lenore Prather Advertisement

Exhibit B begins with the photograph of a gavel and a picture of Chief Justice Lenore Prather slowly materializes in the background. The narration states, "Lenore Prather—Chief Justice of Mississippi's Supreme Court; Lenore Prather—using common sense principles to uphold the law; Lenore Prather—putting victims rights ahead of criminals and protecting our Supreme Court from the influence of special interests." As the narration proceeds, the words "Chief Justice," "Common Sense," and "Victims Rights" appear on the screen. The narrator then states that Lenore Prather was the first woman appointed to the Mississippi Supreme Court, and that she has thirty-five years of experience.

Exhibit C-The Judge Keith Starrett Advertisement

Exhibit C begins with the narration, "Keith Starrett—a common sense Justice." As pictures of Judge Starrett appear on the screen, followed by scenes of school children and scenes of citizens going about their daily routines, the narrator says that Keith Starrett formed the first drug court in Mississippi, and that Starrett's drug court saved taxpayers over one half million dollars in the first year. Then, as the words "Baptist Deacon" and "Victim's Rights Count" appear on the screen, the narration states, "a Baptist Deacon who once headed South Mississippi Child Protection, Starrett knows victims have as much a right to justice as defendants do." The narration closes with, "Judge Keith Starrett—he knows victims rights count!"

Exhibit D-The Justice Kay Cobb Advertisement

Exhibit D is an advertisement touting incumbent Justice Kay Cobb. The narration provides the following, "A teacher, a prosecutor, a Supreme Court Judge. Justice Kay Cobb. At the Bureau of Narcotics she took drug pushers off the streets and put them behind bars. On the Supreme Court she uses common sense to protect the rights of victims." These words appear on the screen simultaneously as they are narrated. The narration then continues with, "Justice Kay Cobb has worked to end the judicial backlog, eliminate endless appeals and insure that death penalty cases are tried promptly." The narration concludes, "Justice Kay Cobb—victims rights count!"

Exhibit E-The Justice Jim Smith Advertisement

Finally, Exhibit E is an advertisement for Justice Jim Smith. An American flag is in the background. The name Jim Smith remains visible throughout the narration, and a scales-of-justice appears in the left part of the screen. While the narration explains that Jim Smith uses common sense and puts victim's rights first, the words, "96% conviction rate" appear on the screen. The narrator states that, "[a]s a district attorney and prosecutor he had a 96% conviction rate. As a judge, he understands that victims rights come ahead of criminal's rights. Judge Jim Smith. For ten years on the Rankin County bench he upheld existing laws—instead of trying to make new ones. He carried that same common sense approach to the Supreme Court in 1993." The narration ends with, "Judge Jim Smith—common sense on the bench!"

All of the advertisements are about thirty seconds in length, and direct the viewer to a web site, www.Litigation Fairness.org, which contains a link to web pages which urge the support of the election of two of these particular candidates, Justice Cobb and Judge Starrett, while presenting the biographies of Chief Justice Prather and Justice Smith. A

sample of these web pages are attached to this opinion as an appendix.

The advertisements *sub judice* do not dwell on any particular issue, but instead ascribe attributes which a voter might find to be desirable in a candidate for judicial office to each of the named candidates. Nor do the advertisements discuss, mention, implicate or concern any person other than the particular candidate being touted in the advertisement. The prominent references to judicial philosophy (common sense) and victim's rights are not accompanied by any elaboration. While the plaintiff contends that technically there is no mention of an election in these advertisements, the State of Mississippi notes that they are being aired at the same time statewide judicial elections are being conducted.

III. STANDING AND RIPENESS

A federal court must find that Article III standing requirements are met before proceeding. These requirements include (1) "injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical"; (2) causation, meaning that the injury is "fairly traceable to the challenged action of the defendant"; and (3) redressability, meaning that "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Valley v. Rapides Parish School Board, 145 F.3d 329, 332 (5th Cir. 1998), citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992). The standing component that deals directly with ripeness is the requirement of "imminence." In a declaratory action, the threatened injury must be "sufficiently 'imminent' to establish standing." Id. A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" See Texas v. United States, 523 U.S. 296, 118 S.Ct. 1257, 1259-60, 140 L.Ed.2d 406 (1998).

In the instant case the parties agree that the Chamber has standing, and the likelihood of litigation is conceded by the parties to be imminent. Therefore, the ripeness balance weighs in favor of addressing this controversy.

IV. THE APPLICABLE MISSISSIPPI STATUTES

The Mississippi statutes providing the focal point of this lawsuit are Mississippi Code Annotated §§ 23-15-801(j) and 23-15-809, statutes dealing with independent expenditures for the purpose of advocating a particular electoral result, but without consulting with or obtaining the cooperation of any candidate. The Attorney General acknowledges that the advertising expenditures in question are individual expenditures, and that he has no proof that the Chamber has consulted any candidate or acted in collusion with any candidate in presenting these advertisements.

Mississippi Code Annotated § 23-15-801 (j) provides that the term "independent expenditure" shall mean an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate, without that candidate's cooperation or consultation. Mississippi Code Annotated § 23-15-809 provides that a person who makes independent expenditures in the amount or value of Two Hundred Dollars ($200.00) or more during a calendar year shall file a statement containing the information required under § 23-15-807.

The Chamber contends that if these statutes are applied to the advertisements in question, then their application will offend the First and Fourteenth Amendments of the United States Constitution. The guaranties afforded by the First Amendment are protected by the due process clause of the Fourteenth Amendment. Williams v. Rhodes, 393 U.S. 23, 30-31, 89 S.Ct. 5, 10, 21 L.Ed.2d 24, 31 (1968); New York Times v. Sullivan, 376 U.S. 254, 276-77, 84 S.Ct. 710, 724, 11 L.Ed.2d 686, 709 (1964); Cantwell v. Connecticut, 310

U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213, 1217 (1940); and De Jonge v. Oregon, 299 U.S. 353, 364, 57 S.Ct. 255, 260, 81 LEd. 278, 283 (1937). There is no question that political expression is protected speech under the First Amendment. Colson v. Grohman, 174 F.3d 498, 506 (5th Cir. 1999), citing Connick v. Myers, 461 U.S. 138, 145, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983). The United States Supreme Court often has reaffirmed that speech on public issues occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection. First National Bank v. Bellotti, 435 U.S. 765, 776, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978) (stating that speech on matters of public concern is "at the heart of the First Amendment's protection"); and Rash-Aldridge v. Ramirez, 96 F.3d 117, 119 (5th Cir. 1996) (same).

V. THE UNITED STATES SUPREME COURT PRECEDENTS

The fountainhead case governing the issues of concern in the instant case is Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). The Buckley decision limited the range of political speech that may be regulated by the Federal Election Campaign Act only to "express advocacy," that is, a communication which explicitly advocates the election or defeat of clearly identifiable candidates. The Supreme Court's decision distinguished "issue advocacy," which is the discussion of issues and/or candidates' positions on them. Under Buckley, this form of communication is not subject to regulation. The Buckley decision, particularly its statement at footnote 52, has given rise to what is now referred to as the "express advocacy' standard. Footnote 52 of the Buckley opinion refers to § 608(e)(1) of the Federal Election Campaign Act and to the construction of statute's scope as being limited to communications containing express words of advocacy of election or defeat, such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote

against," "defeat," and "reject." Other courts have given the "express advocacy" standard the rubric "magic words" test, or "bright line" rule. See Federal Election Commission v. Christian Action Network, Inc., 110 F.3d 1049, 1051 (4th Cir. 1997), referring to the "magic words" of Buckley's footnote 52; and see Faucher v. Federal Election Commission, 928 F.2d 468 (1st Cir.), cert. denied, 502 U.S. 820, 112 S.Ct. 79, 116 L.Ed.2d 52 (1991) (for the reference to a "bright line" rule being established by Buckley). Whether the standard is referred to as "express advocacy" or "magic words," or the "bright line" rule, many courts interpret this standard to require words of advocacy such as those recited in footnote 52 of the Buckley opinion before regulatory jurisdiction over an independent or corporate expenditure can exist.

The United States Supreme Court revisited the Buckley decision in Federal Election Commission v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 248-49, 107 S.Ct. 616, 623, 93 L.Ed.2d 539 (1986) (a case often referred to in short as "MCFL"). Here the Supreme Court was faced for the first time since its decision in Buckley with a form of advertisement, specifically, a newsletter.

The MCFL, an nonprofit group concerned with right-to-life issues, prepared and distributed a newsletter in the ordinary course of its operations. Prior to the September 1978 primary elections, the MCFL printed and distributed a "Special Edition" of its newsletter. While the May 1978 edition of the newsletter had been mailed to 2,109 people, and the October 1978 edition to 3,119 people, more than 100,000 copies of the "Special Edition" were printed for distribution. The front page of the publication was headlined "EVERYTHING YOU NEED TO KNOW TO VOTE PRO-LIFE," and readers were admonished that "[n]o pro-life candidate can win in November without your vote in September." "VOTE PRO-LIFE" was printed in large bold-faced letters on the back page, and a coupon was provided to be clipped and taken to

the polls to remind voters of the name of the "pro-life" candidates. Next to the exhortation to vote "pro-life" was a disclaimer: "This special election edition does not represent an endorsement of any particular candidate."

The MCFL Court also held that an expenditure must constitute "express advocacy" in order to be subject to the statutory prohibition in question, and that the Special Edition constituted express advocacy, citing Buckley. The MCFL Court stated that, "Buckley adopted the 'express advocacy' requirement to distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons. We therefore concluded in that case that a finding of 'express advocacy' depended upon the use of language such as 'vote for,' 'elect,' 'support,' etc." MCFL, 479 U.S., at 248, citing Buckley, supra, at 44, n. 52, 96 S.Ct., at 646, n. 52. The MCFL Court then noted that the Special Edition not only urged voters to vote for "pro-life" candidates, but also identified and provided photographs of specific candidates fitting that description. Said the Court, "[t]he Edition cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians. Rather, *it provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than 'Vote for Smith' does not change its essential nature. . . .*" MCFL, 479 U.S., at 240 (Emphasis added).

Thus, the MCFL Court, faced with an actual communication, determined that "express advocacy" was present in the "Special Edition" of MCFL's newsletter based on the timing of the edition, the unusually large quantity of copies being disseminated, and the exhortations to vote for pro-life candidates, notwithstanding the absence of the "magic words" found at footnote 52 of the Buckley decision.

VI. THE CIRCUIT DIVIDE

A. The Narrow Interpretation

Several Circuit Courts which have had the opportunity to apply the "express advocacy" test based on Buckley and MCFL have adopted a very narrow construction of what these cases require. For instance, in Maine Right to Life Committee, Inc. v. Federal Election Commission, 914 F. Supp. 8 (D. Me. 1996), aff'd per curiam, 98 F.3d 1 (1st Cir. 1996) (referring to Buckley as having established a "bright line" rule), a nonprofit membership corporation and a reader of its publications brought suit seeking a declaratory judgment that the Federal Election Commission's definition of "express advocacy" as to which corporate financial support was prohibited under the Federal Election Campaign Act was too broad, beyond authority, and unconstitutionally vague. The district court agreed, applying the bright line rule that a finding of "express advocacy" requires the presence in a communication of some or all of the explicit words found at footnote 52 of the Buckley opinion. Like Buckley, Maine Right to Life Committee dealt with the interpretation of legislation rather than a specific communication. See also, Faucher v. Federal Election Commission, 743 F.Supp. 64, 68 (D.Me.1990), *aff'd*, 928 F.2d 468 (1st Cir.), cert. denied, 502 U.S. 820, 112 S.Ct. 79, 116 L.Ed.2d 52 (1991), following Buckley by narrowly construing the same federal election laws considered in Buckley.

In Federal Election Commission v. Christian Action Network, 110 F.3d 1049 (4th Cir. 1997), the Fourth Circuit affirmed the district court's dismissal of a Federal Election Commission lawsuit which complained that an advocacy organization's expenditures for a television commercial violated federal election laws governing disclosure of campaign funds. The advertisement in question included the following text which was read by a narrator: "Bill Clinton's vision for America includes job quotas for homosexuals,

giving homosexuals special civil rights, allowing homosexuals in the armed forces. Al Gore supports homosexual couples' adopting children and becoming foster parents. Is this your vision for a better America? For more information on traditional family values, contact the Christian Action Network."

The Fourth Circuit opted for the clear, categorical limitation of Buckley, holding that only expenditures for communications using explicit words of candidate advocacy are prohibited. . . ." Id. at 1051. The Fourth Circuit therefore rejected the Federal Election Commission's position that "express advocacy" could be established by looking at a group's use of imagery, rhetoric, and symbols in criticizing a candidate's position. Id., at 1064.

In Iowa Right to Life Comm., Inc. v. Williams, 187 F.3d 963 (8th Cir. 1999), various organizations which had as one of their purposes political speech sought a preliminary injunction against the enforcement of a provision of an Iowa Campaign Disclosure-Income Tax Check-off Act containing reporting requirements for independent political expenditures. The district court granted the injunction and the Eighth Circuit affirmed, holding that the Buckley decision made clear that a "finding of 'express advocacy' depend[s] upon the use of language such as 'vote for,' 'elect,' 'support,' etc." Significantly, the Eighth Circuit noted that Buckley did not provide an exclusive list of words, and that any such communication must contain express language of advocacy with an exhortation to elect or defeat a candidate. The Eighth Circuit also cited Federal Election Commission v. Furgatch, 807 F.2d 857, 864 (9th Cir. 1987) and its teaching that speech may be termed "advocacy" if it presents a clear plea for

action. Speech that is merely informative, said the Eighth Circuit, is not covered by the Act.[11]

Vermont Right to Life Committee v. Sorrell, 221 F.3d 376 (2nd Cir. 2000), involved a nonprofit corporation (the VRLC) whose goal was to promote right-to-life issues. The VRLC brought a § 1983 action against various state officials, seeking a declaratory judgment that certain sections of a Vermont campaign finance law establishing disclosure requirements for political advertising and reporting requirements for mass media expenditures were facially unconstitutional under the First Amendment. The Second Circuit reversed the district court's dismissal of the case, holding that the plaintiffs had standing. The Court noted that a significant issue would be whether the state statutes in question applied only to advertising and "mass media activities" "that expressly advocated the election or defeat of a clearly identified candidate," citing Buckley. See also, Federal Election Commission v. Central Long Island Tax Reform Immediately Committee, 612 F.2d 45 (2nd Cir. 1980), following the narrower standard based on Buckley's footnote 52.

B. The Broader Interpretation

Set against the narrow interpretation applied by the First, Second, Fourth and Eighth Circuits is the Ninth Circuit's decision in Federal Election Commission v. Furgatch, 807 F.2d 857 (9th Cir.), cert. denied, 484 U.S. 850, 108 S.Ct. 151

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[11] While the Eighth Circuit's decision is touted by the plaintiffs and strictly following Buckley, it is apparent that the Eight Circuit did not consider a finding of express advocacy to be strictly limited to the words contained in Buckley's footnote 52, noting that in Federal Election Commission v. Furgatch, 807 F.2d 857 (9th Cir.), cert. denied, 484 U.S. 850, 108 S.Ct. 151, 98 L.Ed.2d 106 (1987), the Ninth Circuit had allowed the prohibition of the "Don't Let Him Do It" speech as expressed advocacy, and recognizing that the ruling was "a very close call," id., at 861.

98 L.Ed.2d 106 (1987). According to Furgatch, express advocacy may exist if the purpose of the message in question is suggestive of only one meaning, makes a clear plea for action, and is clear as to what action is advocated. Id., at 864.

Furgatch involved an enforcement action against an individual for publishing a newspaper advertisement critical of President Jimmy Carter and urging the readers "Don't let him do it." The Federal Election Commission (hereinafter the "FEC") sued, claiming a violation of Federal Election Campaign Act for the failure to report this expenditure to the FEC and to place a disclaimer on it. The Ninth Circuit agreed with the FEC that these violations had occurred, stating that, "reasonable minds could not dispute that Furgatch's advertisement urged readers to vote against Jimmy Carter. This was the only action open to those who would not 'let him do it.'" Id., at 864. The court summarized its holding as follows:

> We conclude that speech need not include any of the words listed in Buckley to be express advocacy under the Act, but it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate. This standard can be broken into three main components. First, even if it is not presented in the clearest, most explicit language, speech is "express" for present purposes if its message is unmistakable and unambiguous, suggestive of only one plausible meaning. Second, speech may only be termed "advocacy" if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act. Finally, it must be clear what action is advocated. Speech cannot be "express advocacy of the election or defeat of a clearly identified candidate" when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take

> some other kind of action. We emphasize that if any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements. This is necessary and sufficient to prevent a chill on forms of speech other than the campaign advertising regulated by the Act. At the same time, however, the court is not forced under this standard to ignore the plain meaning of campaign-related speech in a search for certain fixed indicators of "express advocacy."

Id., at 864.

The Furgatch decision takes its lead from the United States Supreme Court's decisions in both Buckley and MCFL.[12] Cases which have adopted the approach taken in the Furgatch decision are FEC v. National Organization for Women, 713 F. Supp. 428, 434 (D.D.C. 1989); Osterberg v. Peca, 12 S.W.3d 31, 52 (Tex. 2000); Elections Bd. v. Wisconsin Manufacturers & Commerce, 597 N.W.2d 721, 723-24, 731 (Wisc. 1999); and State ex rel. Crumpton v. Keisling, 982 P.2d 3, 10 (Or. Ct. App. 1999).

In Federal Election Commission v. National Organization for Women, NOW used corporate money to pay for three letters sent to the general public which contained so called "electioneering messages." According to NOW, these letters

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[12] The Furgatch Court cited the First Circuit's opinion in Federal Election Commission v. Massachusetts Citizens for Life, Inc., 769 F.2d 13 (1st Cir.1985)(MCFL), which was on appeal to the United States Supreme Court at the time the Furgatch case was argued to the Ninth Circuit in June of 1986. On December 15, 1986, the United States Supreme Court affirmed the First Circuit's decision in MCFL. The Ninth Circuit handed down Furgatch on January 9, 1987. Even though the Furgatch Court may have missed the opportunity to include the United States Supreme Court citation in its final opinion draft, the relevant points of law remained the same. The First Circuit's MCFL decision being affirmed by the United States Supreme Court did not disturb the Furgatch decision.

were aimed solely at soliciting new members by setting forth the group's political goals. One of the letters in question urged the recipient to join NOW and to wear a 59 cents button as a symbol of the fact that women earn 59 cents for every dollar earned by men. While the letter focused on issues (wage discrimination, Social Security, divorce law, education), it also criticized political leaders for their adverse positions or lack of attention to these issues. Three sentences in the four-page "59 cents letter" are critical of public officials: "And now the Reagan Administration is threatening to make a dangerous situation even worse. . . ." "A bad economy, coupled with an antagonistic Administration in Washington, poses an immediate and real threat to the economic rights of women everywhere. . . ."; and "The New Right, the Reagan Administration, and the Republican Party all thought that "the ladies" would go away after the ERA deadline expired. Were they ever wrong!"

The district court held that this and two other similar letters contained no express advocacy as required by Buckley and MCFL to place the letters within the ambit of the federal statute. "The words listed in Buckley," said the district court, "are not the only ones which will be deemed express advocacy. In Furgatch, the Ninth Circuit held that express advocacy is not strictly limited to communications using certain key phrases. 'The short list of words included in the Supreme Court's opinion in Buckley does not exhaust the capacity of the English language to expressly advocate the election or defeat of a candidate." Furgatch, 807 F.2d at 863. The court of appeals proposed a standard for express advocacy: that speech, when read as a whole and with limited reference to external events, may only be interpreted as an exhortation to vote for or against a specific candidate."

Following the broader standard, the district court concluded that, "[b]ecause the letters are suggestive of several plausible meanings, because there are numerous pleas

for action, and because the types of action are varied and not entirely clear, NOW's letters fail the express advocacy test." 713 F.Supp., at 435. The district court also noted that NOW's three mailings included no explicit words directing the reader how to vote.

In State ex rel. Crumpton v. Keisling, the Oregon Court was confronted with mailings and newspaper advertisements that contained a "WARNING" that public employee unions were buying the "DEMOCRAT[IC] ELECTIONS." These advertisements contained the pictures of particular candidates and the amount of support each had received from public employee unions. The Oregon court expressed the same concerns as the Ninth Circuit in Furgatch that election laws must not be "cleverly circumvented, or thwarted by a rigid construction." Thus, the Court adopted the Furgatch "reasonable minds could differ" test. 982 P.2d 3, 10 (Or. Ct. App. 1999). "The purpose," said the Court, "is not to search for magic words—which careful drafters can, as in this case, usually avoid—but to find the essential message that the publication communicates to the reader. In doing this, the context of the publication—particularly whether or not it came in the midst of a contested election campaign—can play a role in determining how the reader would understand it and, thus, what its message is." Id.

In Osterberg v. Peca, 12 S.W.3d 31, 52 (Tex. 2000), the Osterbergs, aggrieved at a ruling by Judge Peca, donated $34,200.00 to the campaign of his opponent in the subsequent election, and paid for a television advertisement which consisted of the following text: "CONSIDER THIS: Judge Peca was chosen by his peers El Paso's outstanding jurist; He graduated Summa Cum Laude; He worked to reduce his docket for over seven years; IF THAT'S ENOUGH, VOTE FOR HIM. [next screen] But if you want ONE who understands: The Courthouse exists for the people . . . etc. BRING THE COURTHOUSE BACK TO THE PEOPLE!

VOTE FOR HIS OPPONENT and remove HIM if he fails the will of the people!" The Texas Court refused to accept the contention that the Buckley test required the application of a rigid standard, noting that while Buckley restricted "express advocacy" to "spending that is unambiguously related to the campaign of a particular federal candidate" and to "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject,' " Id. at 44 n. 52, the United States Supreme Court in MCFL had stepped beyond the rigid test of Buckley by stating that a message can be "marginally less direct" than the examples listed in Buckley so long as its essential nature "goes beyond issue discussion to express electoral advocacy." See MCFL, 479 U.S., at 249.

The Osterberg Court also observed that the descriptions given in Buckley and MCFL, "do not give unambiguous answers to the myriad situations that arise." Id. 12 S.W.3d, at 52, citing Wisconsin Right to Life, Inc. v. Paradise, 138 F.3d 1183, 1186 (7th Cir.), cert. denied, 525 U.S. 873, 119 S.Ct. 172, 142 L.Ed.2d 140 (1998) for that same observation.

VII. THE RESPECTIVE POSITIONS OF THE PARTIES SUB JUDICE

The Chamber contends that this court must employ the "magic words" test to this dispute *sub judice*, a standard, says the Chamber, which has been applied by the majority of other jurisdictions which have had the opportunity to address this question. So long as the words used in Buckley's footnote 52 are avoided, says the Chamber, political speakers avoid regulation under any circumstances. During oral argument this court posed a number of hypotheticals to counsel for the Chamber seeking to determine the Chamber's perspective on the scope of Buckley. In response to each of the court's hypotheticals, Chamber's counsel responded that unless the

advertisements contained one of the eight magic words appearing at Buckley's footnote 52, the advertisements should not be construed as examples of express advocacy.[13]

In contrast, the State of Mississippi argues that the court should not leave common sense at the doorstep when it considers these matters, and that the definition of "express advocacy" should not require the court to be blind to what all "others can see and understand." The "magic words" approach, says the State of Mississippi, creates a large loophole which would allow all forms of organizations inside and outside of Mississippi to spend unlimited funds on commercials which unambiguously support candidates, with no transparency regarding the source of the funding. The Chamber, says the State of Mississippi, should not be permitted to take refuge in the "magic words" approach simply by cleverly omitting from the commercials in question the specific words listed at footnote 52 of the Buckley decision. In summary, the State is concerned that persons or organizations will surreptitiously advocate the election or defeat of a named candidate but avoid legitimate government regulation by simply omitting "magic words" of advocacy. See Iowa Right to Life Comm, Inc. v. Williams, 187 F.3d

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[13] During oral argument this court asked plaintiff's counsel whether either of the following instances would offend the express advocacy test:

> (1) a narration of the favored candidate's qualifications, a picture of the favored candidate along side the opponent with a line drawn through the picture of the opponent, all superimposed over people standing in what appears to be a voting line; and (2) an advertisement identical to one paid for and run by a specific candidate in which the candidate merely states a qualification while the independent ad simply omitting the words "vote for me" contained in the candidate's ad. Counsel responded that neither of these examples contained express advocacy under the bright line standard of Buckley. Thus, plaintiff's counsel sees no crack in the express advocacy test, unless the ad contains "magic words."

963, 970 (8th Cir. 1999) (commenting on the State of Iowa's position in the Williams case).

VIII. ANALYSIS

Express advocacy is a very narrow class of election-related speech that in "explicit words" or by "express terms advocates the election or defeat of a clearly identified candidate." Federal Election Commission v. Massachusetts Citizens for Life. Inc., 479 U.S. 238, 248-49, 107 S.Ct. 616, 623, 93 L.Ed.2d 539 (1986). In contrast to express advocacy, issue advocacy is the discussion of issues and candidates' positions on those issues without expressly advocating a candidate's election or defeat. The United States Supreme Court has recognized that issue advocacy sometimes may influence the election or defeat of particular candidates, but that does not convert it into express advocacy. Issue advocacy is protected by the First Amendment and can be subjected to no regulation, regardless of its effect on an election. See MCFL, 479 U.S., at 257 n.10. So, the question to be resolved by this court is whether the advertisements at hand constitute merely issue discussion, or whether they expressly advocate for the election of a particular candidate. A court analyzing whether a given statute comports with the First Amendment must hesitate before "imposing judicial formulae so rigid that they become a straightjacket that disables Government from responding to serious problems." Denver Area Education Telecommunications. Consortium, Inc. v. F.C.C., 518 U.S. 727, 116 S.Ct. 2374, 2385, 135 L.Ed.2d 888 (1996).

This court, in opposition to the Chamber's urgings, declines to strictly limit express advocacy to the "magic words" of Buckley's footnote 52. As Furgatch correctly observed, Buckley's footnote 52 does "not exhaust the capacity of the English language to expressly advocate the election or defeat of a candidate." Furgatch, at pages 862-63. Further, and even more importantly, the United States Supreme Court itself, in this court's eye, in MCFL

determined to move beyond the rigid, overly simplistic "magic words" test of Buckley. In MCFL, the Court seemingly moved away from a rigid, talismanic application of Buckley's footnote 52 to an "essential nature" inquiry, as the Court found express advocacy even though the communication at issue was, "marginally less direct than 'Vote for Smith'," one of the "magic words" contained in footnote 52 of the Buckley opinion.

Whether examining the advertisements at hand under the "essential nature" test of MCFL, or under Furgatch's "no other reasonable interpretation" test, this court finds that the advertisements at issue provide explicit directives to vote for the named candidates. These advertisements simply cannot be regarded as mere discussions of public issues. Aired[14] at the very time statewide judicial elections were being conducted in Mississippi, the advertisements contain no true discussion of issues. While the advertisements mention "victims rights" and a "common sense judicial philosophy," the advertisements present no elaboration of these points. Instead, while providing only the background and experience of each candidate, the advertisements repeatedly insert the candidates' names between qualification assertions and each advertisement concludes with an emphatic phrase obviously designed to exhort support for the candidates' election to the Mississippi Supreme Court. Although the express words "vote for the candidate" do not appear anywhere in the advertisements, no reasonable viewer would construe the advertisements otherwise. The viewer sees a sleek, well prepared advertisement, just as a candidate's campaign staff might prepare.

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[14] While timing itself is no talisman of express advocacy, it is a useful element in the court's overall consideration, just as it was in MCFL, where the Supreme Court noted that the 100,000 copies of the "Special Edition" were prepared for dissemination during the September 1978 primary elections.

Further, these advertisements are virtually the same as the advertisements being aired by the candidates themselves. The advertisements repeat the touted candidates' names in the very same manner as the candidates own advertisements which exhort the viewing public to vote for the named candidates. In this court's view, a finding of any use of "magic words" becomes unnecessary when an advertisement clearly champions the election of a particular candidate as the person who will use common sense, ensure prompt adjudication of death penalty cases and uphold victim's rights.

The advertisements display a web site, www.LitigationFairness.org. Significantly, when accessed, the web site contains a link entitled "Mississippi Candidate Information." The link ultimately leads to web pages which exhort the public's support for the election of two of the named candidates, Justice Kay Cobb and Judge Keith Starrett.

True issue advocacy invigorates debate on many issues such as the environment, civil rights, welfare and education, and other matters which, due to their nature, may name candidates who are either supportive of, or contrary to a particular issue. Also critical in the overall calculus, however, is the necessity of having legislation which is effective and capable of informing the public, while condemning abuse of the special status given to true issue advocacy. Ever seeking to be vigilant for the protection of true issue advocacy, this court concludes that legitimate issue advocacy is not before the court today, and that this ruling will not have a chilling effect upon those anxious to exercise their First Amendment political speech rights.

IX. CONCLUSION

Therefore, this court finds the advertisements in question contain express advocacy, and are offensive under Buckley and MCFL. This court is persuaded that these advertisements do not attempt to discuss issues. Rather, the advertisements offer thinly veiled exhortations to support the campaigns of the aforesaid candidates, a plain, clever attempt to avoid the reach of the Mississippi reporting and disclosure laws by eliminating those words listed at footnote 52 of Buckley.

Accordingly, this court hereby denies the request of the Chamber of Commerce of the United States of America for declaratory relief from any subjection to the Mississippi laws governing independent expenditures. Instead, the court finds that the advertisements at issue which favor four specific candidates for the popularly elected Mississippi Supreme Court expressly advocate their elections and, as such, the Chamber must answer under Mississippi's contribution limits and reporting requirements as found at Mississippi Code Annotated §§ 23-15-801 et seq.

The Court shall enter a separate judgment in accordance with Rule 58 of the Federal Rules Civil Procedure.

SO OREDED this the 2nd day or November, 2000

/s/ _____
UNITED STATES DISTRICT JUDGE

Civil Action No. 3:00-cv-778WS
Memorandum Opinion and Order

[PRINTED WEB PAGES ATTACHED TO THIS OPINION LODGED WITH SUPREME COURT]

IN THE UNITED STATED DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3:00-cv-778WS

CHAMBFR OF COMMERCE OF THE
UNITED STATES OF AMERICA,
Plaintiff,

vs.

MICHAEL MOORE, ATTORNEY GENERAL,
STATE OF MISSISSIPPI,
ERIC CLARK, SECRETARY OF STATE,
STATE OF MISSISSIPPI
Defendants.

FINAL JUDGMENT

This cause came before the court on the plaintiffs Motion for Expedited Declaratory Relief under Title 28

U.S.C. §§ 2201 [1] and 2202 [2], asking this court to declare that the plaintiff may televise certain political advertisements favoring specific candidates for the popularly elected Mississippi Supreme Court without being subjected to Mississippi's law pertaining to election contributions and reporting. This court, after considering the arguments and briefs of the parties, found in a separate Memorandum Opinion and Order that the advertisements at issue provided explicit directives to vote for the named candidates, and were subject to Mississippi's law governing election contribution disclosure. Therefore, in accordance with this court's Memorandum Opinion and Order, this court finds for the defendants and against the plaintiff, and the defendants are entitled to recover costs.

SO ORDERED AND ADJUDGED this the 23rd day of January, 2001.

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[1] Title 28 U.S.C. § 2201 provides:

> (a) In a case of actual controversy within its jurisdiction except with respect to Federal taxes other than actions brought under section 7428 of the internal Revenue Code of 1986 a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

[2] Title 28 U.S.C. § 2202 provides:

> Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

/s/ _____
UNITED STATES DISTRICT JUDGE

Civil Action No. 3:00-cv-778WS
Final Judgment

MISSISSIPPI ELECTION STATUTES
(Excerpts)

Mississippi Code Annotated § 23-15-801 (2000).

Definitions

* * * *

(c) "Political committee" shall mean any committee, party, club, association, political action committee, campaign committee or other groups of persons or affiliated organizations which receives contributions aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year of which makes expenditures aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates, or balloted measures and shall, in addition, include each political party registered with the Secretary of State.

* * * *

(e)(i) "Contribution" shall include any gift, subscription, loan, advance or deposit of money or anything of value made by any person or political committee for the purpose of influencing any election for elective office or balloted measure;

(ii) "Contribution" shall not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee; or the cost of any food or beverage for use in any candidate's campaign or for use by or on behalf of any political committee of a political party;

(iii) "Contribution to a political party" includes any gift, subscription, loan, advance or deposit of money or anything of value made by any person, political committee, or other organization to a political party and to any committee,

subcommittee, campaign committee, political committee and other groups of persons and affiliated organizations of the political party.

(iv) "Contribution to a political party" shall not include the value of services provided without compensation by any individual who volunteers on behalf of a political party or a candidate of a political party.

(f)(i) "Expenditure" shall include any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the purpose of influencing any balloted measure or election for elective office; and a written contract, promise, or agreement to make an expenditure;

(ii) "Expenditure" shall not include any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; or nonpartisan activity designed to encourage individuals to vote or to register to vote;

(iii) "Expenditure by a political party" includes 1. any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any political party and by any contractor, subcontractor, agent, and consultant to the political party; and 2. a written contract, promise, or agreement to make such an expenditure.

* * * *

(j) The term "independent expenditure" shall mean an expenditure by a person expressly advocating the election or defeat of a clearly indemnified candidate which is made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of such candidate.

(k) The term "clearly identified" shall mean that:

(i) The name of the candidate involved appears; or

(ii) A photograph or drawing of the candidate appears; or

(iii) The identity of the candidate is apparent by unambiguous reference.

Mississippi Code Annotated § 23-15-803 (2000).

Political committee statements

(a) Statements of organization. Each political committee shall file a statement of organization no later than ten (10) days after receipt of contributions aggregating in excess of Two Hundred Dollars ($200.00), or no later than ten (10) days after having made expenditures aggregating in excess of Two Hundred Dollars ($200.00).

(b) Contents of statements. The statement of organization of a political committee shall include:

(i) The name and address of the committee and all officers;

(ii) Designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer; and

(iii) If the committee is authorized by a candidate, the name, address, office sought, and party affiliation of the candidate.

(c) Change of information in statements. Any change in information previously submitted in a statement of organization shall be reported and noted on the next regularly scheduled report.

Mississippi Code Annotated § 23-15-807 (2000).

Who must report; when; contents

(a) Each candidate or political committee shall file reports of contributions and disbursements in accordance with the provisions of this section. All candidates or political committees required to report may terminate its obligation to

report only upon submitting a final report that it will no longer receive any contributions or make any disbursement and that such candidate or committee has no outstanding debts or obligations. The candidate, treasurer or chief executive officer shall sign each such report.

* * * *

(d) Contents of reports. Each report under this article shall disclose:

(i) For the reporting period and the calendar year, the total amount of all contributions and the total amount of all expenditures of the candidate or reporting committee which shall include those required to be identified pursuant to item (ii) of this paragraph as the total of all other contributions and expenditures during the calendar year. Such reports shall be cumulative during the calendar year to which they relate;

(ii) The identification of:

1. Each person of political committee who makes a contribution to the reporting candidate or political committee during the reporting period, whose contribution or contributions within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars ($200.00) together with the date and amount of any such contribution;

2. Each person or organization, candidate or political committee who receives an expenditure, payment or other transfer from the reporting candidate, political committee or its agent, employee, designee, contractor, consultant or other transfer to such person, organization, candidate or political committee within the calendar year have an aggregate value or amount in excess of Two Hundred Dollars($200.00) together with the date and amount of such expenditure.

(iii) The total amount of cash on hand of each reporting candidate and reporting political committee;

* * * *

(e) The appropriate office specified in Section 23-15-805 must be in actual receipt of the reports specified in this article by 5:00 p.m. on the dates specified in paragraph (b) of this section. If the date specified in paragraph (b) of this section shall fall on a weekend or legal holiday then the report shall be due in the appropriate office at 5:00 p.m. on the first working day before the date specified in paragraph (b) of this section. The reporting candidate or reporting political committee shall ensure that the reports are delivered to the appropriate office by the filing deadline. The Secretary of State may approve specific means of electronic transmission of completed campaign finance disclosure reports, which may include, but not be limited to, transmission by electronic facsimiles (FAX) devices.

* * * *

Mississippi Code Annotated § 23-15-811 (2000).

Sanctions

(a) Any candidate or any other person who shall willfully and deliberately and substantially violate the provisions and prohibitions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not to exceed Three Thousand Dollars ($3,000.00) or imprisoned for not longer than six (6) months or by both fine and imprisonment.

(b) In addition to the penalties provided in paragraph (a) of this section, any candidate or political committee which is required to file a statement or report which fails to file such statement or report on the date in which it is due may be compelled to file such statement or report by an action in the nature of a mandamus.

(c) No candidate shall be certified as nominated for election or as elected to office unless and until he files all

reports required by this article due as of the date of certification.

(d) No candidate who is elected to office shall receive any salary or other remuneration for the office unless and until he files all reports required by this article due as of the date such salary or remuneration is payable.

(e) In the event that a candidate fails to timely file any report required pursuant to this article but subsequently files a report or reports containing all of the information required to be reported by him as of the date on which the sanctions of paragraphs (c) and (d) of this section would be applied to him, such candidate shall not be subject to the sanctions of said paragraphs (c) and (d).

Mississippi Code Annotated § 23-15-813 (2000).

Civil penalties and proceedings

(a) In addition to any other penalty permitted by law, the Secretary of State shall require any candidate or political committee, as identified in Section 23-15-805(a), and any other political committee registered with the Secretary of State, who fails to file a campaign finance disclosure report as required under Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, or who shall file a report which fails to substantially comply with the requirements of Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, to be assessed a civil penalty as follows:

(i) Within five (5) calendar days after any deadline for filing a report pursuant to Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of State shall compile a list of those candidates and political committees who have failed to file a report. The Secretary of State shall provide each candidate or political committee,

who has failed to file a report, notice of the failure by first-class mail.

(ii) Beginning with the tenth calendar day after which any report shall be due, the Secretary of State shall assess the delinquent candidate and political committee a civil penalty of Fifty Dollars ($50.00) for each day or part of any day until a valid report is delivered to the Secretary of State, up to a maximum of ten (10) days. However, in the discretion of the Secretary of State, the assessing of the fine may be waived in whole or in part if the Secretary of State determines that unforeseeable mitigating circumstances, such as the health of the candidate, interfered with timely filing of a report. Failure of a candidate or political committee to receive notice of failure to file a report from the Secretary of State is not an unforeseeable mitigating circumstance, and failure to receive the notice shall not result in removal or reduction of any assessed civil penalty.

(iii) Filing of the required report and payment of the fine within ten (10) calendar days of notice by the Secretary of State that a required statement has not been filed, constitutes compliance with Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53.

(iv) Payment of the fine without filing the required report does not in any way excuse or exempt any person required to file from the filing requirements of Sections 23-15-801 through 23-15-813, and Sections 23-17-47 through 23-17-53.

(v) If any candidate or political committee is assessed a civil penalty, and the penalty is not subsequently waived by the Secretary of State, the candidate or political committee shall pay the fine to the Secretary of State within ninety (90) days of the date of the assessment of the fine. If, after one hundred twenty (120) days of the assessment of the fine the payment for the entire amount of the assessed fine has not been received by the Secretary of State, the Secretary of State

shall notify the Attorney General of the delinquency, and the Attorney General shall file, where necessary, a suit to compel payment of the civil penalty.

(b)(i) Upon the sworn application, made within sixty (60) calendar days of the date upon which the required report is due, of a candidate or political committee against whom a civil penalty has been assessed pursuant to paragraph (a), the Secretary of State shall forward the application to the State Board of Election Commissioners. The State Board of Election Commissioners shall appoint one or more hearing officers who shall be former chancellors, circuit court judges, judges of the Court of Appeals or justices of the Supreme Court, and who shall conduct hearings held pursuant to this article. The hearing officer shall fix a time and place for a hearing and shall cause a written notice specifying the civil penalties that have been assessed against the candidate or political committee and notice of the time and place of the hearing to be served upon the candidate or political committee at least twenty (20) calendar days before the hearing date. The notice may be served by mailing a copy thereof by certified mail, postage prepaid, to the last known business address of the candidate or political committee.

(ii) The hearing officer may issue subpoenas for the attendance of witnesses and the production of books and papers at the hearing. Process issued by the hearing officer shall extend to all parts of the state and shall be served by any person designated by the hearing officer for the service.

(iii) The candidate or political committee has the right to appear either personally, by counsel or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses and to have subpoenas issued by the hearing officer.

(iv) At the hearing, the hearing officer shall administer oaths as may be necessary for the proper conduct of the

hearing. All hearings shall be conducted by the hearing officer, who shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings, but the determination shall be based upon sufficient evidence to sustain it. The scope of review at the hearing shall be limited to making a determination of whether failure to file a required report was due to an unforeseeable mitigating circumstance.

(v) Where, in any proceeding before the hearing officer, any witness fails or refuses to attend upon a subpoena issued by the commission, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of the witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(vi) Within fifteen (15) calendar days after conclusion of the hearing, the hearing officer shall reduce his or her decision to writing and forward an attested true copy of the decision to the last known business address of the candidate or political committee by way of United States first-class, certified mail, postage prepaid.

(c)(i) The right to appeal from the decision of the hearing officer in an administrative hearing concerning the assessment of civil penalties authorized pursuant to this section is granted. The appeal shall be to the Circuit Court of Hinds County and shall include a verbatim transcript of the testimony at the hearing. The appeal shall be taken within thirty (30) calendar days after notice of the decision of the commission following an administrative hearing. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of the preparation of the record of the proceedings by the hearing officer, and the filing of a bond in the sum of Two Hundred Dollars ($200.00), conditioned that if the decision of the hearing

officer be affirmed by the court, the candidate or political committee will pay the costs of the appeal and the action in court. If the decision is reversed by the court, the Secretary of State will pay the costs of the appeal and the action in court.

(ii) If there is an appeal, the appeal shall act as a supersedeas. The court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may be tried in vacation, in the court's discretion. The scope of review of the court shall be limited to a review of the record made before the hearing officer to determine if the action of the hearing officer is unlawful for the reason that it was 1. not supported by substantial evidence, 2. arbitrary or capricious, 3. beyond the power of the hearing officer to make, or 4. in violation of some statutory or constitutional right of the appellant. The decision of the court may be appealed to the Supreme Court in the manner provided by law.

(d) If, after forty-five (45) calendar days of the date of the administrative hearing procedure set forth in paragraph (b), the candidate or political committee identified in paragraph (a) of this section fails to pay the monetary civil penalty imposed by the hearing officer, the Secretary of State shall notify the Attorney General of the delinquency. The Attorney General shall investigate the offense in accordance with the provisions of this chapter, and where necessary, file suit to compel payment of the unpaid civil penalty.

(e) If, after twenty (20) calendar days of the date upon which a campaign finance disclosure report is due, a candidate or political committee identified in paragraph (a) of this section shall not have filed a valid report with the Secretary of State, the Secretary of State shall notify the Attorney General of those candidates and political committees who have not filed a valid report, and the Attorney General shall thereupon prosecute the delinquent candidates and political committees.

Mississippi Code Annotated § 23-15-1021 (2000).

Judicial office donation limits

It shall be unlawful for any individual or political action committee not affiliated with a political party to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars ($2,500.00) for the purpose of aiding any candidate or candidate's political committee for judge of a county, circuit or chancery court or in excess of Five Thousand Dollars ($5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, or to give, donate, appropriate of furnish directly or indirectly, any money, security, funds or property in excess Two thousand Five Hundred Dollars ($2,500.00) to any candidate or the candidate's political committee for judge of a county, circuit of chancery court or in excess of Five Thousand Dollars ($5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, as a contribution to the expense of a candidate for judicial office.

Mississippi Code Annotated § 97-13-15 (2000).

Prohibited political contributions by corporations

It shall be unlawful for any corporation, incorporated company or incorporated association, by whatever name it may be known, incorporated or organized under the laws of this state, or doing business in this state, or for any servant, agent, employee or officer thereof, to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property of said corporation, incorporated company or incorporated association, in excess of One Thousand Dollars ($1,000.00) per calendar year for the purpose of aiding any political party of any candidate for any public office, or any candidate for any nomination for any

public office of any political party, or to give, donate, appropriate or furnish, directly or indirectly, any money, security, funds or property of said corporation, incorporated company or association in excess of One Thousand Dollars ($1,000.00) to any committee or person as a contribution to the expense of any political party or any candidate, reprehensive or committee of any political party or candidate for nomination by any political party, or any committee or other person acting in behalf of such candidate. The limit of One Thousand Dollars ($1,000.00) for contributions to political parties, candidates and committees or other persons acting in behalf such candidates shall be an annual limitation applicable to each calendar year.

Mississippi Code Annotated: § 97-13-17 (2000).

Penalty for illegal corporate contributions

Any corporation, incorporated company or incorporated association, or agent, officer or employee violating any of the provisions of section 97-13-15 shall, upon conviction, be fined not less than one thousand dollars ($1,000.00) nor more than five thousand dollars ($5,000.00).

IN THE SUPREME COURT
OF THE STATE OF MISSISSIPPI

No. [2000-M-01839]

IN RE: CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA,
Petitioner.

MOTION FOR STAY OF PROCEEDINGS PENDING DISPOSITION OF PETITION FOR INTERLOCUTORY APPEAL

Petitioner Chamber of Commerce of the United States of America ("the U.S. Chamber") has filed this day its petition for interlocutory appeal by permission or, in the alternative, for writ of mandamus or prohibition ("the petition"). Petitioner respectfully moves this Court. pursuant to M.R.A.P. 5(e) and 8(c), for a stay, pending resolution of the petition, of the injunctive relief ordered by the Chancery Court of the First Judicial District of Hinds County in its order dated November 3, 2000, requiring petitioner to cease all advertisements concerning Judge Frank G. Vollor and Justice Jim Smith.

In support of this motion, petitioner would show unto the Court the following:

A. Facts Relevant To The Need For A Stay Of All Proceedings

This fall, the U.S. Chamber has independently sponsored a series of television advertisements concerning candidates for judicial office in several states. As a part of that effort, on

October 17, 2000, the U.S. Chamber began airing television advertisements in Mississippi to inform the public about the experience of certain candidates for the Mississippi Supreme Court regarding particular issues of public importance, such as the administration of criminal law.

The Attorney General and Secretary of State believed that these expenditures subjected the U.S. Chamber to the reporting requirements of Miss. Code Ann. § 23-15-801 *et seq*. The U.S. Chamber disagreed and filed suit in federal court seeking a declaration that four of the advertisements were not "express advocacy" under Buckley v. Valeo, 424 U.S. 1 (1976), and therefore were not subject to state regulation. Following an expedited hearing, Judge Wingate of the Southern District of Mississippi disagreed. He held that the four advertisements at issue were express advocacy, and so were outside Buckley's protections from state regulation. See United States Chamber of Commerce v. Moore, No. 3:00-CV-778WS, memorandum opinion at 27 (S.D.Miss. Nov. 2. 2000).

On November 3. Judge Frank G. Vollor obtained the present temporary restraining order forbidding the broadcast of the U.S. Chamber's advertisements concerning either his candidacy or that of his opponent, Justice Jim Smith of the Supreme Court. His application to the Chancellor is attached to the petition as Exhibit A. The Chancellor's temporary restraining order is attached to the petition as Exhibit B. The U. S. Chamber's petition for interlocutory appeal and stay pending appeal is attached to the petition as Exhibit C.

B. The Standard for Granting a Stay

This Court has authority to grant a stay of all proceedings pending an interlocutory appeal. M.R.A.P. 5(e). The standard for granting a stay pending appeal requires that:

> (A) the applicant make a strong showing that he is likely to succeed on the merits of the appeal; (B) the

> appellant establish that unless a stay is granted he will suffer irreparable injury; (C) no substantial harm will come to other interested parties; (D) a stay would do no harm to the public interest.

Board of Trustees of the Jackson Public School District v. Knox, 638 So.2d 1278, 1281 (Miss. 1994) (quoting Official Comment to Rule 62); *see* M.R.A.P. 8(c); M.R.C.P. 62(c); M.R.C.P. 62(g).

These factors are not to be applied in a rigid, mechanical fashion. *United States* v. *Baylor University Medical Center*, 711 F.2d 38, 39 (5th Cir. 1983) (interpreting identical federal rule). Rather, there is a "sliding scale" approach to the four factors—where an especially strong showing is made on one of the factors, a lesser showing is required on the others. *Id.; Ruiz v. Estelle*. 650 F 2d 555, 565 (5th Cir. 1981); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977).[1]

Specifically, a finding of "likelihood of success on the merits" does not require a mathematical probability of reversal. *Ruiz*, *supra*, 650 F.2d at 565. Rather, this first consideration weighs heavily in favor of a stay where the appeal raises questions "so serious, substantial, difficult, and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation." *Holiday Tours*, *supra*, 559 F.2d at 844.

C. The factors as applied in this case

As set forth more fully in the petition, the petitioners have strong support for their argument that the Chancellor's

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[1] This Court conducts a de novo determination of the propriety of a stay pending appeal, even where the trial judge has considered, and denied, a similar request for stay. *Knox*, *supra*. This is appropriate, since the power to grant a stay pending appeal is vested separately and concurrently in both the trial courts under M.R.C.P. 62(c) and this Court under M.R.C.P. 62(g) and M.R.A.P. 8(c).

injunctive relief should be overturned. It is plainly a prior restraint violating the First Amendment. In Republican Party of Florida v. Florida Elections Commission, 658 So.2d 653 (Fla. Dist. Ct. App. 1995), the Court held that, even where an advertisement was financed by illegal campaign contributions, its broadcast could not be enjoined. The U.S. Chamber will suffer immediate and irreparable harm if not allowed to advertise regarding candidates for judicial election. "It is well established that the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Hohe v. Casey, 868 F.2d 69, 72, 73 (3d Cir. 1989). "[T]he harm to plaintiffs from the infringement of their rights under the First Amendment clearly outweighs any purported interest of the defendant." *ACLU v. Reno,* 31 F.Supp.2d 473, 497-98 (E.D.Pa. 1999).

WHEREFORE, PREMISES CONSIDERED, petitioner respectfully moves this Court to stay the TRO entered by the Chancery Court, as well as all further proceedings in that Court, pending resolution of the petition.

Respectfully submitted,

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

By: /s/ _____

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CHRISTOPHER R. GREEN (MSB #99593)
PHELPS DUNBAR, L.L.P.
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IN THE CHANCERY COURT
OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

NO. G2000-2128 S/2

FRANK G. VOLLOR,

Plaintiff,

vs.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; WABG-TV, GREENVILLE, MS; WXVT-TV, GREENVILLE, MS; WAPT-TV, JACKSON, MS; WJTV-TV, JACKSON, MS; WLBT-TV, JACKSON, MS; WDBD-TV, JACKSON, MS; WTOK-TV, MERIDIAN, MS; AND WCBI-TV, COLUMBUS, MS,

Defendants.

TRANSCRIPT OF PROCEEDINGS HELD IN THE ABOVE STYLED AND NUMBERED CAUSE BEFORE THE HONORABLE WILLIAM H. SINGLETARY, CHANCELLOR, ON THE 3RD DAY OF NOVEMBER, 2000.

* * * *

Counsel for Plaintiff:

Now, just for the record and for the Court to hear our side of it, I think it's clear that the only reason we're here at the last minute is because of the Chamber's continuing action to say that it is not subject to Mississippi law. To support that action, they chose the forum. They asked for declaratory relief in the U.S. District Court some two weeks ago. There was nothing, I guess, that could be done since they had raised

an issue that they had some free speech exclusion from Mississippi law, some privilege, etc., etc. It was only yesterday that the U.S, District Court, Judge Henry Wingate, filed his ruling, which is attached as a part of our application for a temporary restraining order, where he finds that such is not the case, that what they are doing is just not even real thinly veiled, but—those words were used in it somewhere—these advertisements that we're complaining of by the Chamber do not discuss issues. They are merely campaign ads on behalf of Jim Smith or against Frank Vollor, the only two candidates in this election.

* * * *

Mr. Pyle: Excuse us just a second, Your Honor.

(PAUSE IN THE PROCEEDINGS WHILE MR. LOYACONO AND MR. PYLE CONFERRED BRIEFLY)

Counsel for Plaintiff: Your Honor, since the Court did require us and asked us to notify Mr. Wallace, Mr. Wallace did make an announcement to the Court that he was appearing specially only for some limited purposes. Now, Mr. Pyle has pointed out rightfully that special appearances under the Mississippi Rules of Civil Procedure are limited only for the purpose of jurisdictional protests. So if he's going to argue as to the merits of this case, then I think it is necessary that he--and the Chamber, of course, him acting for the Chamber--accept the jurisdiction of this Court, not waltz in, be able to tiptoe around and argue merits but say, Oh, we're really not here. So if he's going to argue as to merits, anything but jurisdiction, then I think the Chamber is required to accept the jurisdiction of this Court over it.

* * * *

Counsel for the Chamber:

I do want to say that it has never been the position of the Chamber of Commerce of the United States that it is not subject to Mississippi law. It has always been the position of the Chamber of Commerce that it is in compliance with Mississippi law. That is what we have argued before Judge Wingate, and that is what we argue to the Court today. Although Mr. Loyacono has referred to the advertisements before the Court as being illegal, I do not see any allegation in his application nor did I hear any statement in his argument in what way they are illegal. There is a suggestion that we have breached the contribution limits. What Judge Wingate found yesterday is that these advertisements constitute express advocacy. Express advocacy is part—excuse me, Your Honor—of the definition of independent expenditure under the statute. And for the Court's information, that definition is found at Section 23-15-801(j). Assuming that Judge Wingate's opinion is correct, that these advertisements do constitute independent expenditures, they are in no way illegal. There is no limit on the amount of money that can be spent on independent expenditures in Mississippi. None whatsoever. There are certain reporting requirements that go along with independent expenditures, if that's what they are, but I have heard no argument from counsel as to what reporting requirements, if any, the Chamber may have breached. In fact, as we read the statute, we have not breached any reporting requirements. No report is due until January the 10th, as we read the statute. So there's nothing illegal about the ads. There have been no contributions made, and there is nothing that I've heard that suggests that anything is illegal.

* * * *

Judge Wingate has issued an opinion. He has not issued a judgment as of half an hour ago when I called over there. The matter is still before Judge Wingate.

* * * *

And my last point, Your Honor, is: If I'm wrong about Mississippi law, if I'm wrong about the jurisdiction of this Court, if I'm wrong about the standing of Judge Vollor to be here in the first place as opposed to over in front of Judge Wingate, then we come squarely to the First Amendment of the Constitution of the United States, which quite plainly prohibits the restraint of speech except in cases such as the movement of troops, ships, and great public necessity. The issue of whether a campaign ad funded by an illegal contribution can be enjoined, that has been litigated.

* * * *

And in the case of the *Republican Party of Florida vs. Florida Election Commission,* the court quite squarely held that, "We conclude the issuance of an injunction under such circumstances constitutes an unconstitutional prior restraint of speech. Our freedom of speech is much too important to permit such prior restraint under the circumstances."

IN THE CHANCERY COURT OF
HARRISON COUNTY, MISSISSIPPI

CAUSE NO._____

OLIVER E.DIAZ,JR.,

Plaintiff,

VERSUS

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA;
WLOX-TV, GULFPORT/BILOXI, MS;
WDAM-TV, HATTIESBURG, MS,

Defendants.

TEMPORARY RESTRAINING ORDER

CAME the Applicant, Oliver E. Diaz, Jr., through counsel and by affidavit as required by Rule 65 MRCP, and the Court, having heard the argument of counsel and being advised in the premises, including the affidavits of the Applicant and his counsel, finds that the relief sought should be granted. The Court find, orders and adjudges as follows:

1. The Court finds that it has jurisdiction for the purposes of a Rule 65 motion.

2. The Court notes that Plaintiff's counsel contacted this judge on Saturday afternoon and that the Court, having heard the ex parte motion, was able to contact 3 of the district's four Chancellors and discuss the merits of the application; further, the Court believes there is sufficient merit to the injunction application to issue this order.

3. The Court grants this order without notice because there is insufficient time to notify all parties and schedule a

hearing for the following reasons: Plaintiff has alleged a failure to comply with Mississippi Election Laws by the Defendant, the Chamber of Commerce of the United States of America; Plaintiff has alleged litigation in federal courts to decide the question of whether Defendant Chamber of Commerce was subject to Mississippi Election Laws regarding contributions was not decided by the Court of its choosing until November 2, 2000, only two business days prior to the election.

4. The Court finds that Plaintiff has alleged that irreparable and immediate harm would accrue to Oliver E. Diaz, Jr., as his campaign would be subject to unfair television advertisements in support of his opponent, Keith Starrett, contrary to Mississippi Election Laws due to the shortness of time remaining before the election and his inability to lawfully match the financial contributions of television advertising of the Chamber of Commerce of the United States of America on behalf of his opponent.

IT IS THEREFORE, ORDERED AND ADJUDGED AS FOLLOWS:

1. ORDERED AND ADJUDGED, that each of the Defendants, their agents, servants, and employees are hereby enjoined from transmitting any television advertisement which is paid for or produced by the Chamber of Commerce of the United States of America, its agents, servants, or employees, in support of Keith Starrett and against Oliver E. Diaz, Jr., concerning the Southern District election for the Supreme Court of Mississippi. Specifically, Separate Defendant WDAM-TV, Hattiesburg, Ms., is enjoined only as to television transmission into Harrison County, Hancock County, and Stone County, all within this Court's district.

2. ORDERED AND ADJUDGED, that the Applicant is hereby required to post with this Court a bond in the amount of One Thousand Dollars ($1,000.00), and this Order shall be

immediately binding on the parties on the 4th day of November, 2000, as of 2:30 pm., and service upon each Defendant may be had herein by mail, telephone, facsimile, or by actual notice otherwise.

3. ORDERED AND ADJUDGED, that the Court sets this matter for review on Monday, November 6, 2000, at 1:30 p.m., at the Gulfport Courthouse, should any Defendant feel aggrieved by this injunction; however, unless therein set aside, this Order shall expire ten (10) days after entry or after further Order of this Court pursuant to Rule 65.

SO ORDERED, this the 4th day of November, 2000, at 2:30 p.m.

/s/ _____
CHANCELLOR

IN THE CHANCERY COURT
OF THE FIRST JUDICIAL DISTRICT OF
JONES COUNTY, MISSISSIPPI

CAUSE NO. [2000-0204-E]

BILLY JOE LANDRUM

Petitioner

Versus

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA WDAM, WLOX, WLIBT AND OTHER NEWS MEDIA

Respondents

TEMPORARY RESTRAINING ORDER

THIS CAUSE came on to be heard on VERIFIED COMPLAINT of the Petitioner, Billy Joe Landrum, and the Court after having heard said COMPLAINT herein and being advised in the premises is of the opinion and doth find that sufficient cause exists for the entry of a Temporary Restraining Order as hereinafter set forth.

1. That the Chamber of Commerce, of the United States of America has purchased political advertisements promoting an opponent of the Petitioner, said ads being in violation of §23-15-1021 of the Mississippi Code, annotated is emended.

2. That the violation of said section his been found in an Opinion written by the Honorable Henry T. Wingate, Federal District Judge for the Southern District of Mississippi Jackson Division.

3. That the election for which these advertisements were purchased, is scheduled for Tuesday, November 7, 2000, and unless this Court enters a Temporary

Restraining Order, there will be immediate and irreparable injury, loss and damages to the Petitioner as a result of the instant advertisements being broadcast in violation of the previously identified statute.

IT IS THEREFORE ORDERD, ADJUDGED AND DECREED that the Respondents, the Chamber of Commerce of the United States of America, WDAM, WLOX, WLBT and other news media and televisions stations are hereby restrained and enjoined from creating, broadcasting or publishing within the jurisdiction of this Court are hereby temporarily enjoined from broadcasting or publishing any paid advertisements concerning the race for the Supreme Court in which the name of the Petitioner, Billy Joe Landrum.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the prior notice is impractical due to the fact that the election for which the advertisements are aimed is Tuesday, November 7, 2000, and there is therefore not sufficient time to give notice to the Respondents, but the Court orders a hearing to be set on whether or not this injunction should become permanent on the 8th day of November, 2000, at 9:00 a.m.

IT IS FURTHER ORDERZD, ADJUDGED AND DECREED that the Petitioner shall surrender a cash bond unto the Court in the amount of $500.00

SO ORDERED, ADJUDGED AND DECREED on this 5th day of November, 2000, at 3:00 pm.

/s/ _____
Chancellor

Submitted By

/s/ _____
Thomas T. Buchanan-Bar #7022

IN THE CHANCERY COURT
OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

No. G2000-2137 S/2

WILLIAM A. PYLE,
A CITIZEN OF MISSISSIPPI,
Plaintiff,

v.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; WABG-TV, GREENVILLE, MS; WXVT-TV, GREENVILLE, MS; WAPT-TV, JACKSON, MS; WJTV-TV, JACKSON, MS; WLBT-TV, JACKSON, MS; WDBD-TV, JACKSON, MS; WTOK-TV, MERIDIAN, MS; WCBI-TV, COLUMBUS, MS; WLOX-TV, BILOXI; WDAM-TV, HATTIESBURG; WHLT-TV, HATTIESBURG; WTVA-TV, TUPELO; WLOV-TV, TUPELO; WMC-TV, MEMPHIS; WREG-TV, MEMPHIS; AND WPTY-TV, MEMPHIS
Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

THIS CAUSE is before the Court on Plaintiff's Motion for Temporary Restraining Order. Having reviewed the motion, the Court is of the opinion that the motion is well taken and is, therefore, granted.

The Court has reviewed all relevant filings, all relevant case law, and has held hearings on a related case, but a case with different parties and issues. Based upon this information, including the Affidavit of the Plaintiff and his attorney, the Court is satisfied that a Temporary Restraining

Order Without Notice is within the interest of equity. The Court finds that this Plaintiff will be irreparably and immediately harmed in the absence of immediate equitable relief by this Court. The illegal television advertisements of the Chamber of Commerce of the United States of America (hereinafter "Chamber") clearly support certain judicial candidates throughout the State of Mississippi and clearly identify and intend to defeat certain other judicial candidates throughout the State of Mississippi.

This Court takes judicial notice of the fact that those judicial candidates being supported by the Chamber ads have publicly announced their opposition to these ads and have all asked that the Chamber no longer run these ads. These advertisements clearly affect public opinion and voting decisions, and thus result in an immediate harm to the Plaintiff, who seeks fair elections throughout the State, elections held in compliance with applicable Mississippi statute. This Plaintiff will not be remedied by the imposition of criminal fines and charges in accordance with election statues, therefore, Defendants are incorrect in their assertion that this Court may not restrain an action which may be criminally punished at a later date. Criminal punishment is not the purpose of this Court; instead, this Court's purpose is to halt the harm done to the Plaintiff, immediately, before further harm occurs.

The Defendant, Chamber, is clearly doing business in the State of Mississippi by admittedly investing over $400,000.00 in television ads to this judicial campaign and otherwise. Further, the Chamber has impliedly consented to Mississippi jurisdiction, as well as actually committed itself to Mississippi jurisdiction by an appeal on the merits from a former order of this Court. The Court in this case finds that this is clearly instance where the Defendant, Chamber, is subject to Mississippi Election Laws as well as obviously and openly trying to influence the judicial elections of this state

by touting particular candidates and seeking the defeat of other candidates. That the candidates are few in number and are clearly identifiable. These expenditures are indirect expenditures which are subject to the contribution limits and reporting requirements of Mississippi Code Annotated Section 23-15-801. Chamber has admittedly violated the spending limits of that section, and while having taken the position that it might be subject to criminal prosecution, this Court finds that the relief sought by the Plaintiff is so narrowly crafted in order to achieve the proper legal result, and that it is the least restrictive means of enforcement of the applicable laws. The Court is further impressed by the fact that even the recipients of the Chamber ads have openly and clearly called for the Chamber to cease and desist running its ads.

THEREFORE, it is ordered that each of the Defendants, their agents, servants, employees, attorneys, or those in active concert with them, are hereby enjoined from contracting to transmit or transmitting any television advertisements which are paid for, produced, or furnished by the Chamber of Commerce of the United States of America, its agents, servants, or employees, concerning judicial elections within the State of Mississippi in November, 2000.

This order shall take effect and be binding immediately upon the filing of a bond in the amount of $100. and shall expire ten days after entry, or after further order of this Court, whichever is sooner.

SO ORDERED, ADJUDGED, AND DECREED, this the 6th day of November, 2000.

/s/ _____

CHANCELLOR WILLIAM HALE SINGLETARY

IN THE CHANCERY COURT
OF HINDS COUNTY, MISSISSIPPI

No. [G-2000-2128 S/2]

FRANK G. VOLLOR

Plaintiff

v.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; WABG-TV, GREENVILLE MS; WXVF-TV, GREENVILLE, MS; WAPT-TV, JACKSON, MS; WJTV-TV, JACKSON, MS; WLB-TV, JACKSON, MS; WDBD-TV, JACKSON, MS; WTOK-TV, MERIDIAN, MS; and WCBI-TV, COLUMBUS, MS

Defendants

APPLICATION FOR TEMPORARY RESTRAINING ORDER

COMES NOW the Plaintiff, Frank G. Vollor, and applies for a Temporary Restraining Order against the above-named Defendants, and in support of his application for a Temporary Restraining Order would show unto this Court the following:

I.

The Application involves the contracting between the Chamber of Commerce of the United States of America, hereinafter referred to as "Chamber", and the other defendant television stations. The defendant television stations have as their principal place of business the Central Judicial District of the State of Mississippi, wherein an election is being contested for a seat on the Mississippi Supreme Court between Jim Smith and Frank Vollor, your Plaintiff herein.

In the absence of immediate equitable relief there will be irreparable harm to the Plaintiff. With every transmission or

communication of television advertising paid for by the Chamber, public opinion is being affected and voting decisions by the viewers of those illegal advertisements are being determined. The election day is November 7, 2000.

II.

The television ads on behalf of Jim Smith by the Chamber of Commerce of the United States of America are indirect expenditures which are subject to the contribution limits and reporting requirements of Mississippi Code Annotated, Section 23-15-801. (See the opinion of Honorable Henry T. Wingate, which is attached.) The Chamber of Commerce of the United States of America has violated the spending limit provision of the Mississippi Election Laws which cap individual expenditures at $5,000.00 per person or $1,000.00 per corporation. The Chamber of Commerce of the United States of America is a non-profit corporation which operates in Washington, D.C.

III.

That upon a further evidentiary hearing for a preliminary injunction, there is an overwhelming likelihood that this Court will also find these expenditures illegal and, thus, grant the relief sought herein. On November 2, 2000, the United States District Court, U.S. District Judge Henry T. Wingate, filed its Memorandum Opinion and Order. That Order ruled that the advertisements on behalf of Judge Jim Smith clearly express advocacy and are offensive under applicable law, *Buckley v. Valeo,* 424 US 1, 96 Supreme Court, 612 (1976). Judge Wingate found that the Defendant, Chamber, was subject to Mississippi Election Laws concerning television ads communicated in this particular Supreme Court race between the Plaintiff and Judge Jim Smith.

IV.

The Plaintiff, Frank G. Vollor, is asking this Court for the immediate enforcement of Mississippi Election Laws. The relief sought is narrowly crafted in order to achieve the proper legal result and constitutes the least restrictive means to bring the Chamber of Commerce of the United States of America into compliance with Mississippi law and enjoin its continued violation of Mississippi Election Law. Those television and communication defendants who contracted with the Chamber or its agents, servants, and employees to communicate this illegal advertising should also be enjoined from accepting these ads or communicating these ads in any way to the public by any method of transmission.

V.

This Court should immediately enter its Order enjoining the Chamber of Commerce of the United States of America and all other defendant television stations from airing those television commercials being aired and paid for by the Chamber in support of Justice Jim Smith or against the election of Judge Frank Vollor. This Order should go into effect immediately, without further delay or immediate and irreparable injury, loss, and damage will result to Frank G. Vollor, your Applicant herein, before the adverse parties or their attorneys can be heard in opposition. (See Affidavit of Frank G. Vollor, which is attached.)

VI.

The Defendant, Chamber, is the cause of this emergency time constraint because of its failure to comply with Mississippi law and then its application to the United States District Court for Declaratory Relief, which was just issued on November 2, 2000, as shown by attached exhibit.

VII.

The Affidavit of the Attorney for Applicant is attached hereto and made a part hereof, as required by Rule 65 MRCP.

VIII.

There will be no loss to the Chamber, the primary Defendant, and there can be no loss to the communication defendants for being restrained from running ads not in compliance with or in violation of Mississippi Election Laws. In any event, only a minimal bond should be required.

IX.

For these and other reasons orally presented to the Court, the within relief should be granted without notice.

RESPECTFULLY SUBMITTED, this the 3rd day of November, 2000.

/s/ _____
PAUL KELLY LOYACONO

RULE 65 AFFIDAVIT OF ATTORNEY

STATE OF MISSISSIPPI

COUNTY OF WARREN

1. I, Paul Kelly Loyacono, am attorney for the Plaintiff in the Application of Frank G. Vollor for a Temporary Restraining Order.

2. The list of television stations in my possession has only the address and general manager and I do not know the attorney for the Chamber of Commerce of the United States of America or its address, except Washington, D.C.

3. That the Applicant, Frank G. Vollor, furnished me with the Order of this date signed by U.S. District Court Judge Henry T. Wingate, who found that the Chamber of Commerce of the United States of America was subject to the election laws of this state.

4. That there is no time to notify all Defendants, as the Order of Judge Wingate was not signed until this day, and it was the Chamber of Commerce of the United States of America which brought the Action for Declaratory Relief in his Court. There are remaining only two (2) business days until the election of November 7, 2000.

5. Notice should not be required because this immediate relief is made necessary by the failure of the Chamber of Commerce of the United States of America to abide by Mississippi Election Laws. The Chamber of Commerce of the United States of America had filed for Declaratory Judgment on the question of whether it was subject to Mississippi Election Laws, and it chose the time and forum for that decision, which was just rendered this day by the U.S. District Court for the Southern District of Mississippi.

6. The cause of there not being adequate time for notice is only the fault of the Defendant. the Chamber of Commerce of the United States of America, and at no fault of the Plaintiff, Frank G. Vollor, or his attorney.

WITNESS MY SIGNATURE, this the 2nd day of November, 2000.

/s/ _____
PAUL KELLY LOYACONO

IN THE CHANCERY COURT
OF HINDS COUNTY, MISSISSIPPI

No. G2000-2137 S/2

WILLIAM A PYLE, A CITIZEN OF MISSISSIPPI
Plaintiff

v.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; WABG-TV, GREENVILLE, MS; WXVF-TV, GREENVILLE, MS; WAPT-TV, JACKSON, MS; WJTV.TV, JACKSON, MS; WLBTTV, JACKSON, MS; WDBD-TV, JACKSON, MS; WTOK-TV, MERIDIAN, MS; and WCBI-TV, COLUMBUS, MS; WLOX-TV, BILOXI; WDAM-TV, HATTIESBURG; WHLT-TV, HATTIESBURG; WTVA-TV, TUPELO; WLOV-TV, TUPELO; WMC-TV, MEMPHIS; WREG-TV, MEMPHIS AND WPTY-TV, MEMPHIS
Defendants

APPLICATION FOR TEMPORARY
RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

COMES NOW the Plaintiff, William A. Pyle, and applies for a Temporary Restraining Order against the above-named Defendants, and in support of his application for a Temporary Restraining Order would show unto this Court the following:

I.

The Application involves the contracting between the Chamber of Commerce of the United States of America, hereinafter referred to as "Chamber", and the various television stations throughout this state. The defendant television stations have as their principal place of business the

State of Mississippi. where in a statewide election is being contested for seats on the Mississippi Supreme Court.

In the absence of immediate equitable relief there will be irreparable harm to the Plaintiff, as well as to other citizens of this state. With every transmission or communication of television advertising paid for by the Chamber, public opinion is being affected and voting decisions by the viewers of those illegal advertisements are being determined. The Plaintiff and countless other citizens will be harmed because the illegal advertisements by the Defendant, Chamber, adversely affect the Plaintiff's right as a citizen of the State of Mississippi and the United States of America to participate in a fair and impartial election process. The election day is November 7, 2000. The Plaintiff wishes only that the election laws of the Sovereign State of Mississippi be upheld. and enforced.

II.

This Court has jurisdiction over the parties for the purpose of this Petition for a Temporary Restraining Order. At least three (3) defendant television stations have their principal place of business in this district. The Chamber has appeared in this Court and later in the Mississippi Supreme Court appealing a former Order of this Court on the merits of this Court's rulings involving related but different issues. The Chamber has become subject to this Court's jurisdiction by admittedly doing business within this district and spending hundreds of thousands of dollars contracting with the defendant television stations in an illegal attempt to manipulate judicial elections through its own unregulated, unsolicited, and uncontrolled advertisements for or against judicial candidates for election to the Mississippi Supreme Court.

III.

The television ads on behalf of judicial candidates supported by the Chamber of Commerce of the United States of America are indirect expenditures which are subject to the contribution limits and reporting requirements of Mississippi Code Annotated, Section 23-15-801. (The opinion of Honorable Henry T. Wingate, which is made a part hereof by reference.) The Chamber of Commerce of the United States of America has violated the spending limit provision of the Mississippi Election Laws which cap individual expenditures at $5,000.00 per person or $1,000.00 per corporation.

IV.

That upon a further evidentiary hearing for a preliminary injunction, there is an overwhelming likelihood that this Court will also find these expenditures illegal and, thus, grant the relief sought herein. On November 2, 2000, the United States Distinct Court, U.S. District Judge Henry T. Wingate. filed its Memorandum Opinion and Order. That Order ruled that the advertisements on behalf of certain candidates clearly express advocacy and are offensive under applicable law, *Buckley v. Valeo*, 424 US 1. 96 Supreme Court, 612 (1976). Judge Wingate found that the Defendant, Chamber, was subject to Mississippi Election Laws concerning television ads for which it paid and which it produced. The Chancery Court of Hinds County granted a Temporary Restraining Order and, upon appeal, said Order was affirmed by the Mississippi Supreme Court. (Order is attached as an exhibit.)

V.

The Plaintiff, William A. Pyle, is asking this Court for the immediate enforcement of Mississippi Election Laws. The relief sought is narrowly crafted in order to achieve the proper legal result and constitutes the least restrictive means to bring the Chamber of Commerce of the United States of America

into compliance with Mississippi law and enjoin its continued violation of Mississippi Election Law. Those television and communication defendants who contracted with the Chamber or its agents, servants, and employees to communicate this illegal advertising should also be enjoined from accepting these ads or communicating these ads in any way to the public by any method of transmission.

VI.

The rights of your Petitioner, a citizen of Mississippi, and of all the candidates for election to the Mississippi Supreme Court are being immediately and irrevocably adversely affected. Even those candidates supported by the Chamber have clearly asked the Chamber to stop running its ads.

VII.

This Court should immediately enter its Order enjoining the Chamber of Commerce of the United States of America and all other defendant television stations from airing those television commercials being aired and paid for by the Chamber in support of or against any judicial candidates. This Order should go into effect immediately, without further delay or immediate and irreparable injury, loss, and damage will result to William A. Pyle, your Applicant herein, before the adverse parties or their attorneys can be heard in opposition. (See Affidavit of William A. Pyle. which is attached.)

VIII.

The Defendant, Chamber, is the cause of this emergency time constraint because of its failure to comply with Mississippi law and its declaratory action in U.S. District Court, a forum of its own choice and which in it was unsuccessful and lost on all litigated issues.

IX.

The Affidavit of the Attorney for Applicant is attached hereto and made a part hereof, as required by Rule 65 MRCP.

X.

There will be no loss to the Chamber, the primary Defendant, and there can be no loss to the communication defendants for being restrained from running ads not in compliance with or in violation of Mississippi Election Laws. In any event, only a minimal bond should be required.

XI.

For these and other reasons orally presented to the Court. the within relief should be granted without notice.

RESPECTFULLY SUBMITTED, this the 6th day of November, 2000.

/s/ _____

PAUL KELLY LOYACONO

RULE 65 AFFIDAVIT OF ATTORNEY

STATE OF MISSISSIPPI

COUNTY OF HINDS

1. I, Paul Kelly Loyacono, am attorney for the Plaintiff in the Application of William A. Pyle for a Temporary Restraining Order.

2. The list of television stations in my possession has only the address and general Manager; and Honorable Michael Wallace, the attorney for the Chamber of Commerce of the United States of America. has received telephonic notice of filing upon the filing.

3. There is no time to notify all Defendants, as the Order of Justice Scalia was not signed until this day, and it was the Chamber of Commerce of the United States of America which brought the Motion for Stay without hearing. The election is tomorrow, November 7, 2000.

4, Notice should not be required because this immediate relief is made necessary by the failure of the Chamber of Commerce of the United States of America to abide by Mississippi Election Laws. The Chamber of Commerce of the United States of America had filed for Declaratory Judgment on the question of whether it was subject to Mississippi Election Laws, and it chose the time and forum for that decision, which was just rendered November 2, 2000, by the U.S. District Court for the Southern District of Mississippi.

5. The cause of there not being adequate time for notice is only the fault of the Defendant, the Chamber of Commerce of the United States of America, and at no fault of the Plaintiff, William A. Pyle, or his attorney.

WITNESS MY SIGNATURE, this the 6th day of November, 2000.

/s/ _____
PAUL KELLY LOYACONO